

AMENDED IN SENATE AUGUST 21, 2012

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN ASSEMBLY MAY 1, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2529**

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**Introduced by Assembly Members Wieckowski and Beall**

February 24, 2012

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An act to amend Sections 116760.43, 116760.50, 116761.20, 116761.21, 116761.23, 116761.50, 116761.65, and 116761.70 of the Health and Safety Code, relating to safe drinking water.

### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2529, as amended, Wieckowski. Safe Drinking Water State Revolving Fund.

Existing law, the California Safe Drinking Water Act, requires the State Department of Public Health to administer provisions relating to the regulation of drinking water to protect public health. The department's duties include, but are not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, adopting and enforcing regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies.

Existing law establishes the Safe Drinking Water State Revolving Fund, which is continuously appropriated to the department for the provision of grants and revolving fund loans to provide for the design

and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards. Existing law authorizes the department to establish specified separate accounts or subaccounts within the fund.

Existing law requires applicants for loans or grants to provide specified information to the department. Existing law authorizes the department to enter into contracts with applicants for grants or loans, and requires and authorizes these contracts to contain specified information.

This bill would require an applicant for funding to demonstrate that it has the technical, managerial, and financial capacity to operate and maintain its water system for at least 20 years, as specified. The bill would authorize an applicant, subject to specified conditions, to receive up to 80% of the full cost of a construction project in the form of a loan. The bill would require that contracts entered into between the department and an applicant include certain additional information, and authorize the contracts to include certain additional information.

This bill would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 116760.43 of the Health and Safety Code
- 2 is amended to read:
- 3 116760.43. (a) The department may adopt emergency
- 4 regulations pursuant to Chapter 3.5 (commencing with Section
- 5 11340) of Part 1 of Division 3 of Title 2 of the Government Code
- 6 necessary or convenient to implement this chapter and to meet
- 7 requirements pursuant to the federal act.
- 8 (b) The adoption of any emergency regulations that are filed
- 9 with the Office of Administrative Law within 18 months of the
- 10 effective date of this act shall be deemed to be an emergency and
- 11 necessary for the immediate preservation of the public peace, health
- 12 and safety, or general welfare.
- 13 (c) Applicable regulations in effect at the time a complete
- 14 application for funding a planning and preliminary design project
- 15 pursuant to this chapter is received by the department shall apply
- 16 to the planning and preliminary design project or construction
- 17 project funding, unless the department determines a regulation

1 adopted later, but prior to the date a funding agreement is issued  
2 for a planning and a preliminary design project or a construction  
3 project, would be more beneficial to the project applicant, in which  
4 case the later adopted regulation may be applied.

5 SEC. 2. Section 116760.50 of the Health and Safety Code is  
6 amended to read:

7 116760.50. The department shall establish criteria that shall  
8 be met for projects to be eligible for consideration for funding  
9 under this chapter. The criteria shall include all of the following:

10 (a) All preliminary design work for a defined project that will  
11 enable the applicant to supply water that meets safe drinking water  
12 standards, including a cost estimate for the project, shall be  
13 completed.

14 (b) A legal entity shall exist that has the authority to enter into  
15 contracts and incur debt on behalf of the community to be served  
16 and owns the public water system or has the right to operate the  
17 public water system under a lease with a term of at least 20 years,  
18 unless otherwise authorized by the department. If the proposed  
19 project is funded by a loan under this chapter, the department may  
20 require the applicant to secure a lease for the full term of the loan  
21 if the loan exceeds 20 years.

22 (c) The applicant shall hold all necessary water rights.

23 (d) The applicant shall have completed, prior to receiving a  
24 funding agreement, environmental review, and documentation of  
25 the defined project, including, but not limited to, any review  
26 required pursuant to the California Environmental Quality Act  
27 (Division 13 (commencing with Section 21000) of the Public  
28 Resources Code) and the guidelines adopted pursuant thereto. Any  
29 measures required for compliance with applicable environmental  
30 laws and regulations shall be included in the final plans for the  
31 defined project.

32 (e) The applicant has assembled sufficient financial data to  
33 establish its ability to complete the proposed project and to  
34 establish the amount of debt financing it can undertake.

35 (f) The applicant shall demonstrate that it has the technical,  
36 managerial, and financial capacity to operate and maintain its water  
37 system, including the construction project, in accordance with  
38 Section 300j-12(a)(3) of the federal act, state law, and applicable  
39 regulations for at least 20 years, or shall submit an acceptable plan

1 for achieving this capacity by the time the project is scheduled to  
2 be completed.

3 SEC. 3. Section 116761.20 of the Health and Safety Code is  
4 amended to read:

5 116761.20. (a) Planning and preliminary engineering studies,  
6 project design, and construction costs incurred by community and  
7 not-for-profit noncommunity public water systems may be funded  
8 under this chapter by loans, and, if these systems are owned by  
9 public agencies or private not-for-profit water companies, by  
10 grants, or a combination of grants and loans.

11 (b) (1) The department shall determine what portion of the full  
12 costs the public agency or private not-for-profit water company is  
13 capable of repaying and authorize funding in the form of a loan  
14 for that amount. The department shall authorize a grant only to the  
15 extent the department finds the public agency or not-for-profit  
16 water company is unable to repay the full costs of a loan.

17 (2) Notwithstanding any other provision of this chapter, a small  
18 community water system or nontransient noncommunity water  
19 system that is owned by a public agency or a private not-for-profit  
20 water company and serving a severely disadvantaged community,  
21 is deemed to have no ability to repay a loan.

22 (c) At the request of the department, the Public Utilities  
23 Commission shall submit comments concerning the ability of  
24 suppliers, subject to its jurisdiction, to finance the project from  
25 other sources and to repay the loan.

26 SEC. 4. Section 116761.21 of the Health and Safety Code is  
27 amended to read:

28 116761.21. Not more than 30 percent and not less than 15  
29 percent, provided that there are projects eligible for funding as  
30 prescribed in Section 116760.70, of the total amount of the  
31 capitalization grant may be expended for grants. This amount shall  
32 be limited to disadvantaged communities specified in Section  
33 1452(d) of the federal act (42 U.S.C. Sec. 300j-12).

34 SEC. 5. Section 116761.23 of the Health and Safety Code is  
35 amended to read:

36 116761.23. (a) The maximum amount of a planning grant  
37 permitted under this chapter for each participating public water  
38 system's share of the costs of the planning, engineering studies,  
39 environmental documentation, and design of a single project shall  
40 be no more than five hundred thousand dollars (\$500,000).

(b) Unless the department approves an increase pursuant to this subdivision, the maximum amount of a construction grant award authorized under this chapter to each participating public water system for its share of the cost of the construction of a single project shall be no more than three million dollars (\$3,000,000). The department may approve an increase in the maximum amount for a construction grant award authorized under this chapter so that the maximum amount of the construction grant award does not exceed ten million dollars (\$10,000,000) only if the department makes all of the following findings:

(1) A public water system that serves a disadvantaged community has a defined project need that exceeds the maximum grant amount of three million dollars (\$3,000,000).

(2) The defined project has been bypassed in at least one funding cycle due to a lack of funds.

(3) The defined project is eligible for funding pursuant to the program regulations.

(4) The defined project represents the highest public health risk among unfunded projects, as determined by the department according to its standard criteria.

(c) Total funding under this article for planning, engineering studies, environmental documentation, project design, and construction costs of a single project, whether in the form of a loan or a grant, or both, shall be determined by an assessment of affordability using criteria established by the department.

(d) Subject to all other limitations of this chapter, a small community water system or nontransient noncommunity water system, owned by a public agency or private not-for-profit water company, serving severely disadvantaged communities shall be eligible to receive up to 100 percent of eligible project costs in the form of a grant, to the extent the system cannot afford a loan as determined by the department pursuant to Section 116761.20.

(e) Subject to the availability of funds and the applicant's ability to repay, an applicant may receive up to *80 percent of* the full cost of the construction project in the form of a loan bearing interest at the rate established pursuant to subdivision (a) of Section 116761.65.

SEC. 6. Section 116761.50 of the Health and Safety Code is amended to read:

1 116761.50. (a) The department may enter into contracts with  
2 applicants for grants or loans for the purposes set forth in this  
3 chapter. Any contract entered into pursuant to this section shall  
4 include only terms and conditions consistent with this chapter and  
5 the regulations established under this chapter.

6 (b) The contract shall include all of the following terms and  
7 conditions that are applicable:

8 (1) An estimate of the reasonable cost of the project or study.

9 (2) An agreement by the department to loan or grant, or loan  
10 and grant, the applicant an amount that equals the portion of the  
11 costs found by the department to be eligible for a state loan or  
12 grant. The agreement may provide for disbursement of funds during  
13 the progress of the study or construction, or following completion  
14 of the study or construction, as agreed by the parties.

15 (3) An agreement by the applicant to proceed expeditiously with  
16 the project or study.

17 (4) An agreement by the applicant to commence operations of  
18 the project upon completion of the project, and to properly operate  
19 and maintain the project in accordance with the applicable  
20 provisions of law.

21 (5) In the case of a loan, an agreement by the applicant to repay  
22 the state, over a period not to exceed the useful life of the project  
23 or 20 years, whichever is shorter, except as provided in the federal  
24 act, or in the case of a study, over a period not to exceed five years,  
25 that includes all of the following:

26 (A) The amount of the loan.

27 (B) The administrative fee specified in subdivision (a) of Section  
28 116761.70.

29 (C) Interest on the principal, which is the amount of the loan  
30 including, if applicable, an administrative fee.

31 (6) In the case of a grant, an agreement by the public agency or  
32 private not-for-profit water company to operate and maintain the  
33 water system for a period of 20 years, unless otherwise authorized  
34 by the department.

35 (7) (A) The time for the completion of the planning and  
36 preliminary design project. Subject to any requirements of the  
37 federal act and its implementing regulations and guidelines, in the  
38 case of a project for planning and a preliminary design, pursuant  
39 to Section 116760.80, and except as specified in subparagraph (B),

1 the funding recipient shall complete the project within 18 months  
2 from the date of the execution of the funding agreement.

3 (B) If the funding recipient cannot complete the project within  
4 18 months, the department may grant an extension of up to 18  
5 months upon request of the funding recipient.

6 (c) The contract may include any of the following terms and  
7 conditions:

8 (1) An agreement by the funding recipient to adopt a fee  
9 structure that provides for the proper maintenance and operations  
10 of the project and includes a sinking fund for repair and  
11 replacement of the facilities in cases where appropriate. The fee  
12 structure shall also provide an acceptable dedicated source of  
13 revenue for the repayment of the amount of the loan, and the  
14 payment of administrative fees and interest.

15 (2) If the entire project is not funded pursuant to this chapter,  
16 the department may include a provision requiring the applicant to  
17 share the cost of the project or obtain funding from other sources.

18 (3) An agreement by the funding recipient to complete, as part  
19 of the planning and preliminary design project or construction  
20 project, a rate study pursuant to guidelines established by the  
21 department.

22 (4) An agreement by the funding recipient to implement, not  
23 later than the conclusion of the construction project, the approved  
24 plan for achieving technical, managerial, and financial capacity  
25 as specified in subdivision (f) of Section 116760.50.

26 (5) If the funding recipient is a small community water system  
27 or nontransient noncommunity water system, owned by a public  
28 agency or private not-for-profit water company receiving grant  
29 funding, an agreement by the funding recipient to review and  
30 consider guidelines adopted by the department for any procurement  
31 of engineering, environmental compliance, or architectural services.

32 (d) The department may require applicants to provide security  
33 for loan contracts.

34 SEC. 7. Section 116761.65 of the Health and Safety Code is  
35 amended to read:

36 116761.65. (a) The department shall annually establish the  
37 interest rate for loans made pursuant to this chapter at 50 percent  
38 of the average interest rate, computed by the true interest cost  
39 method, paid by the state on general obligation bonds issued in  
40 the prior calendar year. All loans made pursuant to this chapter

1 shall carry the interest rate established for the calendar year in  
2 which the funds are committed to the loan, as of the date of the  
3 issuance of the funding commitment. The interest rate set for each  
4 loan shall be applied throughout the repayment period of the loan.  
5 Interest on the loan shall not be deferred.

6 (b) Notwithstanding subdivision (a), if the loan applicant is a  
7 public water system that is a disadvantaged community or provides  
8 matching funds, the interest rate on the loan shall be 0 percent.

9 SEC. 8. Section 116761.70 of the Health and Safety Code is  
10 amended to read:

11 116761.70. (a) Not more than 4 percent of the capitalization  
12 grant may be used by the department for administering this chapter.  
13 The department may establish a reasonable schedule of  
14 administrative fees for loans, which shall be paid by the funding  
15 recipient to reimburse the state for the costs of the state  
16 administration of this chapter.

17 (b) Charges incurred by the Attorney General in protection of  
18 the state's interest in the use of repayment of grant and loan funds  
19 under this chapter shall be paid. These charges shall not be paid  
20 from funds allocated for administrative purposes, but shall be  
21 treated as a program expense not to exceed one-half of 1 percent  
22 of the total amount deposited in the fund.